



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Dr. W. A. Davis, State Registrar
Texas State Board of Health
Austin, Texas

Dear Sir:

Opinion No. O-4190

Re: Does the expression "any citizen of the State of Texas" include only those who are residents of Texas at the time the certificate was filed, or also those who were citizens of Texas at the time of the birth by being native born, and related questions?

Your letter of November 4, 1941, requesting an opinion of this department on the questions stated therein reads in part as follows:

"It is suggested by a number of the County Judges that I secure from you an opinion as to Rule 81a, Article 4477, R. C. S., as amended by H. B. 614 in 1939 and the amendments passed at the last session of the Legislature:

"A. Does the expression 'any citizen of the State of Texas' include only those who are residents of Texas at the time the certificate was filed, or also those who were citizens of Texas at the time of the birth by being native born?

"If in your opinion under H. B. 614 'any citizen of the State of Texas' refers to citizenship at the time of the birth,

"(a) In the case of a person born in Texas, but whose parents reside in Texas at the time of his birth, and who removed from Texas immediately after the birth, in view of the language of the

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Supreme Court in Cobbs vs Coleman, 14 Texas 594, to the effect that 'every citizen of Texas' is not to be taken in the restricted sense as designating only the native born or naturalized citizen, but in its general acceptation and meaning as descriptive of the inhabitants of the country', is such a person entitled to a finding of citizenship under H. B. 614?

"(b) If the question of citizenship is to be determined as at the time of birth under H. B. 614, is the amendment to H. B. 614 passed by the 47th Legislature, providing that 'any citizen of the State of Texas wishing to file the record of any birth . . . that occurred outside of the State of Texas', etc., a nullity, or should the phrase 'any citizen of the State of Texas' contained in this amendment relate to the citizenship at the time the application is filed, or if it should relate only to citizenship at the time of the birth, should it be confined to those persons born outside of Texas and whose parents were citizens of Texas at the time of their birth?

"A birth certificate is considered a statement of the facts surrounding the birth on the date of the birth.

"B. Can a subsequent event affect the facts existing on the date of the birth, and should such a subsequent event be written into a birth record?

"When the certificate has been considered by the Court and additional evidence, as necessary, has been submitted 'to establish the citizenship of the individual filing the certificate', as defined by you

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"C. Should the Court Order state that the citizenship of the person whose birth certificate is filed and the truthfulness of the statements made in the certificate have been established?"

House Bill No. 624, Acts of the 47th Legislature, Regular Session, 1941, is an act amending Section 18 of Senate Bill No. 48, Chapter 41, page 116, Acts of the 40th Legislature, First Called Session, as amended by Section 2 of House Bill No. 614, Chapter 2, page 346, General Laws of the 46th Legislature, to provide for uniform fee to be charged for issuance of delayed birth and death certificates by the probate court, the clerk thereof and the State Registrar, and declaring an emergency. House Bill No. 974, Acts of the 47th Legislature, Regular Session, 1941, is an act to amend Section 18, Chapter 41, Acts of the 40th Legislature, First Called Session, as amended by Section 2 of House Bill No. 614, Acts of the Regular Session of the 46th Legislature, to provide that any citizen of Texas wishing to file the record of any birth or death occurring inside the State of Texas, not previously registered, may submit such record to the probate court in the county where such birth or death occurred, and to provide that any citizen of the State of Texas wishing to file the record of any birth or death occurring outside the State of Texas not previously registered may submit such record to the probate court in the county where he resides, and declaring an emergency.

(With reference to the effect of House Bill No. 624, supra, upon House Bill No. 974, supra, and vice versa, we refer you to our opinion No. 0-3848, bearing date August 18, 1941, and addressed to you.)

House Bill No. 624, supra, reads in part as follows:

"...And provided further, that any citizen of the State of Texas wishing to file the record of any birth or death, not previously registered, may submit to the Probate Court in the county where the birth or death occurred, a record of that birth or death written on the adopted forms of birth and death certificates. The certificate shall be substantiated by the affidavit of the medical attendant present at the time of the birth, or in the case of death, the affidavit of the physician last in attendance upon the de-

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ceased, or the undertaker who buried the body. When the affidavit of the medical attendant or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. The Probate Court shall require such other information or evidence as may be deemed necessary to establish the citizenship of the individual filing the certificate, and the truthfulness of the statements made in that record. The Clerk of said Court shall forward the certificate to the State Bureau of Vital Statistics with an order from the Court to the State Registrar that the record be, or be not, accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act. . . ."

House Bill No. 974, supra, provides in part:

". . . And provided further, that any citizen of the State of Texas wishing to file the record of any birth or death that occurred in Texas, not previously registered, may submit to the Probate Court in the County where such birth or death occurred, a record of such birth or death written on the adopted forms of birth and death certificates; and provided further that any citizen of the State of Texas wishing to file the record of any birth or death that occurred outside of the State of Texas, not previously registered, may submit to the Probate Court in the County where he resides a record of that birth or death written on the adopted forms of birth and death certificates. The certificate shall be substantiated by the affidavit of the medical attendant present

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at the time of the birth, or in case of death, the affidavit of the physician last in attendance upon the deceased, or the undertaker who buried the body. When the affidavit of the medical attendant or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred, with a second affidavit of some person who was acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. The Probate Court shall require such other information or evidence as may be deemed necessary to establish the citizenship of the individual filing the certificate, and the truthfulness of the statements made in that record. The Clerk of the said Court shall forward the certificate to the State Bureau of Vital Statistics with an order from the Court to the State Registrar that the record be, or be not accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act. Such certified copies shall be prima facie evidence in all Courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose."

Some of the definitions of the word "citizen" as found in Words and Phrases, Per. Ed., Vol. 7, p. 197, and the following pages are as follows:

"In common parlance, all people are citizens.

"A 'citizen' is one who owes allegiance to the state, and he has the right to reciprocal protection from it.

"The word 'citizen', as used in the Constitution and laws of the United States, has uniformly conveyed the idea of membership of a nation, and nothing more.

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"A 'citizen' is defined by Webster to be 'a person, native or naturalized, who has the privilege of voting for public officers and who is qualified to fill public offices in the gift of the people; also either native-born or naturalized person, of either sex, who is entitled to full protection in the exercise and enjoyment of so-called private rights.' Bouvier gives the definition of a citizen in American law as one who under the Constitution and laws of the United States has a right to vote for Representatives in Congress and other public officers and who is qualified to fill offices in the gift of the people. All persons born or naturalized, in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state, wherein they reside. Abbott defines it thus: 'A person who owes allegiance to and may claim reciprocal protection from a government; one who is a member of the United States, or of the body politic of a sovereign state. Age or majority is not involved. Women are citizens as fully and truly as men. Nor does a recognition of women's citizenship involve a grant of political rights, such as are indeed usually conferred only on citizens, but do not inhere in that status'."

"By 'citizen of the State' is meant a citizen of the United States whose domicile is in such state.

"Plaintiff, who, after becoming highest executive officer of Ku Klux Klan, leased apartments for himself and family outside state at headquarters of organization, but continued to maintain home owned by him within state, in which he had lived and practiced profession as dentist for over 20 years, was 'citizen' of state, within Vernon's Ann. St., Bill of Rights, § 19, providing that citizen shall not be deprived of life, liberty, property, privileges, or immunities, except by due course of law. Evans v. American Publishing Co., 13 S. W. 2d 358, 360, 118 Tex. 433."

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"By section 8 of the declaration of the Texas general convention, it was declared that the state would give donations of land to all who volunteered their services in the Texas struggle against Mexico for independence and receive them as citizens. 4 Sayles' St. Tex. p. 138. Held, that a citizen of Illinois, who entered the military service of Texas as a volunteer in such war after the adoption of such declaration of promised citizenship, and who died in her service, became a citizen of Texas, though his wife remained in Illinois until after his death, and that she and his children also thereby became citizens of Texas, and were thus entitled to bounty lands under such provision. Kircher v. Murray, 54 F. 617, 621.

"Citizenship 'is the state of being vested with the rights and privileges of a citizen.' Abrigo v. State, 15 S. W. 408."

In view of the foregoing definitions and the above mentioned acts, it is our opinion that the term "any citizen of the State of Texas" includes all those who are residents of the State of Texas at the time the certificate is filed and also those who were born in Texas although they may now be citizens of other states or countries. In reply to your second question as stated above, we respectfully answer the same in the negative. The statute (Article 4477, Vernon's Annotated Civil Statutes) does not authorize the writing of subsequent events into the birth record except that when any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. (Also see Rule 26 of Article 4477, supra, with reference to adoptions, etc.)

With reference to your third question, it will be noted that the above mentioned acts specifically and expressly provide "the certificate shall be substantiated by the affidavit of the medical attendant present at the time of the birth, or in case of death, the affidavit of the physician last in attendance upon the deceased, or the undertaker who buried the body. When the affidavit of the medical attendant

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or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. The Probate Court shall require such other information or evidence as may be deemed necessary to establish the citizenship of the individual filing the certificate, and the truthfulness of the statements made in that record. The Clerk of said Court shall forward the certificate to the State Bureau of Vital Statistics with an order from the Court to the State Registrar that the record be, or be not, accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act."

The certificate must be substantiated by the affidavits mentioned in the act. It is our opinion that the probate court must determine the citizenship of the person whose birth certificate is filed and ascertain the truthfulness of the statements made in connection therewith. However, with reference to the order of the court to the State Registrar, it is not necessary that this order state that the citizenship of the person whose birth certificate is filed and the truthfulness of the statements made relative thereto have been established. The statute only requires that the "order from the court to the State Registrar that the record be, or be not, accepted."

We are returning herewith the correspondence which you sent us with your opinion request.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

APPROVED NOV 24, 1941

Boots Allen

DEPUTY ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

Ardell Williams

By

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Assistant

AW:GO

ENCLOSURE

